

IN RE J&L SPECIALTY PRODUCTS CORP.

NPDES Appeal No. 92-22

***ORDER GRANTING REVIEW IN PART, DENYING REVIEW
IN PART, AND REMANDING IN PART***

Decided February 2, 1994

Syllabus

J&L Specialty Products Corporation ("J&L") seeks review of the denial of its evidentiary hearing request by U.S. EPA Region V on matters relating to the issuance of an Individual Control Strategy ("ICS") under Clean Water Act §304(l) and an NPDES permit under CWA §402 for J&L's stainless-steel finishing plant in Louisville, Ohio. Region V asserts that review should be granted only if the Region erroneously resolved the alleged factual issues raised in J&L's evidentiary hearing request.

J&L sought an evidentiary hearing on numerous factual and legal conclusions made by the Region in approving Ohio's listing of J&L on a list of facilities requiring an ICS and in issuing that ICS. J&L also sought an evidentiary hearing on facts it contends demonstrate entitlement to variances from the permit's effluent limitations for total dissolved solids ("TDS"), cyanide, and nitrite/nitrate, which were included in the permit pursuant to CWA §301(b)(1)(C). J&L further contends that its evidentiary hearing request raised the material factual question of whether State certification or a waiver thereof existed prior to the issuance of the final permit, and the legal issue that seeking State certification simultaneously with seeking public comment is contrary to applicable regulations.

J&L argues that it is entitled to an evidentiary hearing on the permit's effluent limitations for pH, which were imposed under CWA §301(b)(1)(C), because the technical problems with achieving the permit's limitation outweigh its benefits. Concerning the permit's effluent limitations for whole effluent toxicity ("WET") and biomonitoring requirements, J&L contends that these conditions are neither legally nor factually justified. Alternatively, J&L contends that if the permit can include WET limitations and biomonitoring requirements, then the permit's biomonitoring requirements are deficient in several respects: 1) the Region did not follow Ohio policy in formulating them; 2) the biomonitoring requirements should not operate concurrently with the permit's chemical-specific effluent limitations; and 3) the permit does not adequately describe the sampling stations. J&L also argues that the biomonitoring requirements are deficient because they require a full year of testing on the pimephales promelas (fathead minnow).

J&L also contends that its evidentiary hearing request should have been granted on whether the nitrite/nitrate effluent limitation lacks a legal and factual foundation because the State, prior to the issuance of the final permit, began the process to change the use designation component of the water quality standard upon which the effluent limitation is based. J&L argues that it is entitled to an evidentiary hearing on the permit's TDS effluent